



PRIVATE AND CONFIDENTIAL
BRIEFING MEMO

It is well documented that Ahmadis have fled from Pakistan where they face multiple forms of persecution from the State and non-state actors. Neither Thailand nor Malaysia are signatories to the 1951 UN Refugee Convention relating to the Status of Refugees ("Refugee Convention") or its 1967 Protocol. Both countries also lack a national asylum policy. Without a legal status, refugees are vulnerable to arrest, indefinite detention, deportation and possible "refoulement" in contravention of the principles with the UN Convention. Living conditions of refugees are generally poor, with large families often living in one room only.

There are 1,200 Ahmadi refugees in Thailand and around 4,000 in Malaysia.

Most of the refugees arrived after the Lahore attacks in 2010 and have been in Malaysia or Thailand for at least five years but many have been living in these countries for longer periods with no end in sight. Numbers coming into these countries have dramatically been reduced in the past few years. UNHCR is aware of this. The issue is to deal with those currently in these countries who are in no better condition than Pakistan. The argument that dealing with the current backlog of Ahmadi cases will lead to more Ahmadis entering Thailand or Malaysia is not credible.

In Malaysia, asylum-seekers and refugees face similar numerous problems. Access to healthcare is extremely expensive and lawful employment not available. Several refugees reported police brutality. Additionally, Ahmadis face discrimination because of their religion. Article 3 of the Federal Constitution states that Islam is the official religion of Malaysia, but the federal government has no authority to regulate Islamic religious affairs throughout the country. In Malaysia, Ahmadis are considered non-Muslim and are therefore not allowed to practice their religion. Notwithstanding, many Ahmadis are identified as Muslims in their National Registration Identification Card. This fact gives the State Islamic Religious Department the right to investigate the Ahmadiyya community and call them to the State's Shariah Court.

Non-refoulement – Ahmadis cannot be returned to Pakistan where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This is simply not an option.

There is no real durable solution for Ahmadis in these countries. In relation to Malaysia, many meet the UNHCR vulnerability guidelines and should be considered for resettlement or alternative pathways. The resettlement of Ahmadi Muslims to third countries should be prioritised particularly given the current situation in Pakistan.

OBSERVATIONS

A Fact-Finding Mission was carried out by international experts and organisations on the situation of refugees in Thailand and Malaysia which sets out the full position and recommendations¹. The fact that Thailand and Malaysia are not parties to the Refugee Convention means that asylum seekers and refugees in these countries have no legal status and this renders them extremely vulnerable. They are at risk of detention and refoulement contrary to the principles of UN Convention.

Weaknesses and absence of uniformity in UNHCR RSD and documentation procedures exacerbate the position of the asylum seekers and refugees in such circumstances.

Immigration detention in both countries could be indefinite and conditions are appalling, inhumane and degrading.

The principle of family unity and best interests of children are being overlooked in Thailand and Malaysia detention policies due to detention of minors with unrelated adults and/or separation of parents from children.

In Malaysia, the position of Ahmadi Muslims is not far removed from the problems faced by them in Pakistan.

RECOMMENDATIONS

- Designate Ahmadis as a group which needs protection, thus prioritising the resettlement of Ahmadi asylum-seekers and refugees.
- Adopt a more pro-active and flexible approach to refer Ahmadis for resettlement under programmes such as the Mandate Refugee Scheme and Gateway Protection Programme.
- Design resettlement programmes for certain groups of Ahmadis, in line with the criteria set up by UNHCR.
- Ensure that resources are directed towards a much faster and efficient refugee status determination procedure to avoid the repeated pushing back of assessment interviews and rendering asylum-seekers more vulnerable to local state authorities due to inadequate paper-based ID documentation.

¹ http://hrcommittee.org/wp-content/uploads/2019/08/HRC-Report-2019_web-edition.pdf